

These are the tentative rulings for civil law and motion matters set for Thursday, October 17, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, October 16, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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**1. M-CV-0058065      Martinez, Alberto vs. Wilson, Christine**

The appearance of the parties is required for the hearing on defendant's request for stay.

**2. M-CV-0058674      U.S. Bank, N.A. vs. Skiff, Bob**

Defendant's Motion to Set Aside Default Judgment is continued to October 31, 2013 at 8:30 a.m. in Department 40 at the request of the moving party.

**3. M-CV-0059268      Siu, Chan vs. Brah, Parmdip S.**

Defendant's Demurrer to the Complaint is overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.)

The complaint complies with Code of Civil Procedure §1166 as (1) the complaint has been verified, (2) the facts for which recovery is based are sufficiently set forth in the complaint, (3) the premises are described with reasonable certainty, and (4) the method for service is attached to the complaint.

Defendant is ordered to file and serve an answer or denial on or before October 22, 2013. (CCP§1167.3.)

**4. S-CV-0024879                      Patterson, Howard vs. Rogers, Daryl et al**

The appearance of the parties is required on plaintiff's Motion for Preferential Trial Setting.

The defendant's request for telephonic appearance is granted. The defendant is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

**5. S-CV-0027248                      Davies, A. vs. Martinez, G.**

Appearance required. The court is informed that plaintiff has made arrangements to appear at the hearing via CourtCall.

Plaintiff's Motion to Reopen Discovery is denied. This is plaintiff's second motion seeking to reopen discovery and plaintiff has failed to meet the requirements of CCP§1008. Even if the plaintiff had met the requirements of section 1008, he failed to make a sufficient showing of the necessity and reasons for the discovery; the diligence or lack of diligence in seeking the discovery and the reasons it was not completed earlier; or the likelihood that permitting discovery would prevent the case from going to trial. (CCP§2024.050(b).)

The clerk shall send a copy of this ruling to plaintiff.

**6. S-CV-0030694                      Kuhn, Darlene, et al vs. Edwards, Viola, et al**

Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication is denied. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (CCP§437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (CCP§437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) "A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (CCP§437c(p)(2).)

Defendants have failed to meet their initial burden to establish that the second cause of action for financial abuse cannot be established or that there is a complete

defense to the action. Specifically, they focus upon the issues surrounding the withdrawal of monies from the joint accounts. However, plaintiffs allege further violations in their complaint, which include allegations that defendant Viola Edwards fraudulently induced the decedent “to enter into a series of financial transactions that were contrary to his true intention, to wit, he was induced to cash out a valuable series of savings bonds that he and his former wife MAXINE HUSTON had held for approximately 20 years, and then deposit the proceeds into his Wells Fargo accounts. Thereafter, he was induced to add Defendant Steven Edwards, son of VIOLA, as a Pay-on-Death beneficiary to the Wells Fargo accounts that had been funded with his separate property funds.” (Complaint ¶14.) The pleadings serve as the “outer measure of materiality” for a motion for summary judgment in addition to determining the scope of the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) Defendants fail to address this portion of the financial abuse action. As previously stated, summary adjudication cannot be granted unless it completely disposes of a cause of action. (CCP§437c(f)(1).) Since defendants have failed to meet their initial burden, the motion is denied in its entirety.

**7. S-CV-0030726                      Gupta, Deepak vs. Dulay, Harpreet**

Plaintiff’s Motion to Have Matters Requested in Request for Admissions (Set Three) be Deemed Admitted

Plaintiff’s unopposed Motion to Have Matters Requested in Request for Admissions (Set Three) be Deemed Admitted is granted. The matters encompassed in Plaintiff’s Requests for Admissions, Set Three are deemed admitted. Sanctions in the amount of \$847.50 are imposed on the defendant Harpreet Dulay pursuant to CCP§§2023.010 and 2033.280.

**8. S-CV-0030882                      Ace Body Shop & Towing, et al vs. City of Lincoln, Calif.**

The appearance of the parties is required on the Motion for Protective Order and Motion for Terminating and Monetary Sanctions. Counsel for plaintiff is to bring the stipulated protective order to the hearing.

The defendant’s request for telephonic appearance is granted. The defendant is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

**9. S-CV-0031102                      Knapp, Amy C. vs. Sutter Roseville Medical Center, et al**

Gerald C. Sterns and Sterns and Walker’s Motion to be Relieved as Counsel for plaintiff Amy Knapp is granted and they shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon plaintiff Amy Knapp.

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**10. S-CV-0031148                      Mazzoni, Nello, et al vs. Centex Real Estate Corp., et al**

Cross-Defendant St. Paul Fire and Marine Insurance Company's (St. Paul) Motion to Strike the Declaration of Joseph Ferrentino

Preliminary Matters

As an initial matter, the court notes that Centex Homes (Centex) filed an untimely opposition to the current motion. The court has discretion to refuse to consider a late filed paper. (CRC Rule 3.1300(d).) In this instance, the court will consider Centex's untimely opposition.

Request for Judicial Notice

Centex's request for judicial notice is granted in its entirety.

Ruling on Motion

St. Paul's motion is granted in part. The court grants St. Paul's request as it relates to striking the declaration of Joseph Ferrentino. The motion is denied as to the request to compel Mr. Ferrentino to attend a further deposition and the request for sanctions.

The declaration of Joseph Ferrentino in Support of Centex's Motion for Summary Adjudication is stricken. The clerk is directed to return to St. Paul the lodged deposition transcript and video of Mr. Ferrentino.

**11. S-CV-0031202                      L'Amoreaux, Roger, et al vs. Baldwin Contracting Co., et al**

The demurrer to the second amended cross-complaint is continued, on the court's own motion, to October 31, 2013 at 8:30 a.m. in Department 40. The court apologizes for any inconvenience to the parties.

**12. S-CV-0031950                      Hodgson, Fredrick, et al vs. East Bay Investors, LLC**

As a preliminary matter, the instrument entitled "Non-Stip" filed on October 3, 2013 is stricken because the signatory, Tory Pankopf, Esq., is not attorney of record for the plaintiffs in this matter and it is untimely, in any event, pursuant to Local Rule 20.2.

The appearance of counsel is required on the Motion to be Relieved as Counsel.

**13. S-CV-0032724                      Kandris, Thomas P., et al vs. Gyori, Jeremy, et al**

Defendants' Demurrer to the First Amended Complaint (FAC) is dropped from the calendar as the court previously heard this matter on October 3, 2013.

Defendant City of Roseville's (the City) Demurrer to the First Amended Complaint (FAC)Request for Judicial Notice

The City's request for judicial notice is granted over plaintiffs' objection.

Ruling on Demurrer

The City's demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The FAC fails to sufficiently allege that plaintiffs have complied with the Government Claims Act. The six causes of action are also insufficiently pled and do not establish causes of action for negligence, intentional tort, or fraud. Nor does the FAC sufficiently allege facts to support exemplary damages against a public entity. (Govt C§818.)

The second amended complaint must be filed and served on or before November 8, 2013.

Defendant Sutter Roseville Medical Center's (Sutter Roseville) Demurrer and Motion to Strike the First Amended Complaint (FAC)Request for Judicial Notice

Sutter Roseville's request for judicial notice is granted over plaintiffs' objection.

Ruling on Demurrer

Sutter Roseville's demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The six causes of action are insufficiently pled and do not establish causes of action for negligence, intentional tort, or fraud.

The second amended complaint must be filed and served on or before November 8, 2013.

### Ruling on Motion to Strike

In light of the court's ruling on the demurrer, the motion to strike is dropped as moot.

### Defendants Peter Hull and Wallace McKinney's Demurrer to the First Amended Complaint (FAC)

Defendants' demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The six causes of action are insufficiently pled and do not establish causes of action for negligence, intentional tort, or fraud.

The second amended complaint must be filed and served on or before November 8, 2013.

### Defendants Peter Hull and Wallace McKinney's Motion to Strike the FAC

In light of the court's ruling on the demurrer, the motion to strike is dropped as moot.

### **15. S-CV-0033224                      Quality Loan Service Corp. vs. 1876 Tuscan Grove Cir. Rsvl.**

The appearance of the parties is required on the hearing regarding claims to the surplus funds on deposit with the court.

### **16. S-CV-0033306                      Ambroselli, Marco vs Anapolsky, Louis J.**

Defendant's demurrer is sustained in part. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The second cause of action for specific performance and third cause of action for breach of contract fail to allege sufficient facts of the terms of the contract to be enforced. In all other respects, the complaint is sufficiently pled. Hence, the demurrer is sustained with leave to amend as to the second and third causes of action. The demurrer is overruled as to the first and fourth causes of action.

The second amended complaint shall be filed and served on or before November 8, 2013.

The court declines to address the issue of sealing any portion of any amended complaint at this time. Plaintiff may bring a proper motion seeking leave to seal any proposed amended complaint.

**17. S-CV-0033398            Hofman, John Arthur vs. Greco, John N.**

Petitioner's unopposed Motion for Attorney's Fees is granted. Petitioner is awarded \$3,070.00 in attorney's fees and \$314.25 in costs.

**18. S-CV-0033492            Hoffman, Eric - In Re the Petition of**

The court notes that the Petition for Approval of Transfer of Structured Settlement was rescinded by the applicant.

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